SUPREME COURT, U.S.

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SEP 1 1966
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 303

ANDRE VAN WAGENBERG,

Petitioner,

v.

AINO VAN WAGENBERG,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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RESPONDENT'S BRIEF

Statement of the Case

Respondent, the former wife in this domestic relations case, respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari to this Court. The basis for the opposition to this Writ is that no substantial federal question is presented.

The facts are quite simple. Respondent and Petitioner were married on May 24, 1943, and had one child, a daughter (R. 11). The marriage ended in a disagreement; and on April 25, 1952, in the State of New York, Petitioner-husband and Respondent-wife, who was a resident of New York, entered into a Separation Agreement which provided, as here pertinent, that the husband would

pay Respondent the sum of $500.00 a month. As is most pertinent to this Petition, the Agreement further provided that the husband would reimburse his wife for any "extraordinary medical expenses" that their daughter might incur (R. 11-14).

The Separation Agreement, negotiated and signed by both parties in the State of New York, also provided that the husband would set up an escrow account in New York to guarantee certain payments with a New York broker (Fahnestock & Co.) (R. 13).

After the Agreement was signed in New York, the daughter of the parties contracted infantile paralysis (R. 10). As to this, there is no issue, and there is further no issue that the husband, despite repeated demands, has not paid the extraordinary medical expenses for his daughter's medical condition. On April 22, 1963, Respondent-former-wife instituted an action in the State of New York for $18,500.00 to recover upon the agreement for the extraordinary medical expenses that she had spent on behalf of her daughter (R. 8-10). Petitioner, the former husband, was served personally in the State of Maryland (R. 17-18), pursuant to Section 302 of the New York Civil Practice Law and Rules which provides:

"§302. *Personal jurisdiction by acts of non-domiciliaries*

(a) *Acts which are the basis of jurisdiction.*

A court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, as to a cause of action arising from any of the acts enumerated in this section, in the same manner as if he were a domiciliary of the state, if, in person or through an agent, he:

1. transacts any business within the state * * *".

Petitioner chose not to appear in the New York action, and judgment was entered against him by default on December 2, 1963 (R. 19-20).

Following this default, suit was brought on the New York judgment against Petitioner in Maryland. The Court of Appeals of Maryland, after full consideration, ordered Petitioner to comply with the New York judgment (Petitioner's Brief, Appendix A). It is from this ruling of the highest court of the State of Maryland that the husband now petitions this Court for certiorari.

ARGUMENT

The Petition should be denied for lack of any substantial federal question

In the instant case, despite Petitioner's lengthy Brief, the record is abundantly clear that the issues between the parties have been thoroughly dealt with by the Courts of both New York and Maryland, and that no substantial federal question is presented for this Court to review. The record further shows that the Petitioner-husband, after full notice, not only had his opportunity to be provided with a fair adjudication of whatever his position may have been, but also that the courts of both states thoroughly reviewed the case and found against him.

The record further shows, and there appears to be no dispute whatever from the Petitioner, that he did in fact sign, within the State of New York, an Agreement to reimburse his ex-wife for extraordinary medical expenses, which were incurred for their daughter in her polio illness (R. 11-14).

The instant Petition for Certiorari to this Court, it is respectfully submitted, is a patent attempt to renege on

this written agreement by a father at the expense of his seriously ill daughter.

The reasons stated in the Petition by the father constitute an unwarranted strain at a technicality that does not exist. The judgment obtained in the New York courts is entitled to full faith and credit under the United States Constitution, Article IV, §1, 28 U.S.C., §1728. Pursuant to that constitutional provision, together with Section 302 of the New York Civil Practice Law and Rules, the New York judgment was validly enforced in Maryland. *Longines-Wittnauer Co.* v. *Barnes Reinecke,* 15 N. Y. 2d 451 (1965).

The Petitioner-father, in attempting to evade his obligations to his ill daughter, in his argument to this Court is able only to present an argument that the Separation Agreement did not constitute "transacting business" within the ambit of the New York State statute. As the Maryland Court below painstakingly pointed out, the Legislature in New York has a definite interest in protecting its citizens' rights in transactions occurring within its borders. It did not narrow the transaction of "business" in CPLR §302 merely to coarsely commercial affairs.

This Petition presents no "substantial federal question" under Rule 19 of this Court's Rules. As this Court has often and clearly stated, the key point in determining jurisdiction on petitions from State adjudications is whether "fair play and substantial justice" between the parties has been done. *International Shoe Co.* v. *State of Washington,* 326 U. S. 310 (1945); *McGee* v. *International Life Ins. Co.,* 355 U. S. 220 (1957).

In the circumstances here presented, the Courts below have fairly dealt with Petitioner-husband, who concededly

signed an agreement with his wife to take care of their daughter's extraordinary medical expenses and openly defaulted on that agreement when his daughter contracted polio. The husband was accorded ample notice of the fact of the disease and the amounts of the medical expenses, and defied his agreement to pay them. On the Record in this Petition, "fair play and substantial justice" between the parties have clearly been rendered by the Courts of New York and Maryland.

The husband's Petition to this Court constitutes no more than a final attempt to evade and delay his plain obligation to his family.

CONCLUSION

It is respectfully submitted that the Petition for Certiorari to the Court of Appeals of Maryland should be denied.

Respectfully submitted,

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Entry of Appearance

PLEASE TAKE NOTICE that the undersigned, whose appearance has not previously been entered herein, hereby appears in this Court as attorney for Respondent.

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